



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 30, 1993

Honorable Jack Herrington
District and County Attorney
Red River County Courthouse
P.O. Box 364
Clarksville, Texas 75426-0364

Letter Opinion No. 93-71

Re: Clarification of Attorney General Opinion
DM-233 (1993) (ID# 21786)

Dear Mr. Herrington:

We have received a request to clarify Attorney General Opinion DM-233 (1993), in which we concluded that the Texas Department of Criminal Justice (the "TDCJ") may not operate a "work program facility" under chapter 497, subchapter C of the Government Code, although it may operate a "prison industries program" under chapter 497, subchapter A of the Government Code.

Among other things, you specifically asked about the application of title 18 of the United States Code, section 1761 to the TDCJ's prison industries program. As we stated in Attorney General Opinion DM-233, "[i]n general, title 18 of the United States Code, section 1761(a) criminalizes the transportation in interstate commerce of 'any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners . . . in any penal or reformatory institution.'" We further stated that "[s]ubsection (c), . . . , exempts goods made by convicts or prisoners who are participating in one of not more than fifty nonfederal prison work pilot projects that the Director of the Bureau of Justice Assistance has designated and who meet other specified conditions." We have been informed that our discussion of title 18 of the United States Code, section 1761 appears inconsistent with the United States Department of Justice's construction of the section; we therefore wish to clarify our statements. We understand that the United States Department of Justice has interpreted subsection (a) of section 1761 to exempt only those goods, wares, or merchandise made by convicts or prisoners who are participating in a nonfederal prison work pilot project certified under subsection (c).

You argued that goods manufactured in the TDCJ prison industries program are not exempt under section 1761(c). We are informed that the TDCJ's prison industries program is not certified under section 1761(c). We have been informed, however, that goods manufactured in the TDCJ's prison industries program are transported only within the State of Texas. Thus, section 1761 of title 18, United States Code, which applies only to the transportation in interstate commerce of prison-made goods, is wholly inapplicable to goods manufactured in the TDCJ's prison industries program. Moreover, inasmuch as the goods manufactured in the TDCJ's prison industries program are transported only

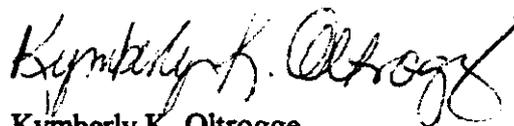
within the State of Texas, the prison industries program cannot be certified under section 1761(c) of title 18, United States Code.

In accordance with these clarifications of the text of Attorney General Opinion DM-233, we wish to clarify the first sentence of the summary of that opinion. Title 18, section 1761 of the United State Code does not apply to goods manufactured within the prison industries program of the TDCJ because such goods are transported only within the State of Texas. Furthermore, the summary should state that, because goods manufactured within the TDCJ's prison industries program are transported only within the State of Texas, the prison industries program cannot be certified under section 1761(c) of title 18, United States Code. Thus, the summary need not discuss exceptions to the prohibition in section 1761(a) of the transportation in interstate commerce of prison-made goods.

S U M M A R Y

Attorney General Opinion DM-233 (1993) is clarified to reflect our understanding that the United States Department of Justice has interpreted section 1761(a) of title 18, United States Code, to exempt from the prohibition against the transportation in interstate commerce of prison-made goods only those goods, wares, or merchandise made by convicts or prisoners who are participating in a nonfederal prison work pilot project certified under subsection (c). Title 18, section 1761 of the United States Code does not, however, apply to goods manufactured within the prison industries program of the Texas Department of Criminal Justice because such goods are transported only within the State of Texas. Furthermore, because goods manufactured within the TDCJ's prison industries program are transported only within the State of Texas, the prison industries program cannot be certified under section 1761(c) of title 18, United States Code.

Very truly yours,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee